FINAL EXAM

Criminal Law L506, Sec. 61 Fall 2005 Professor Falk December 19, 2005

Exam Begins: 6:00 p.m. Exam Ends: 9:00 p.m.

INSTRUCTIONS

- 1. This is a three-hour, closed-book exam. You may not have any written or printed materials with you while taking the exam.
- 2. Please be sure that you have all pages of the exam and that you answer each question; I cannot make allowances for unanswered questions.
- 3. Do not misallocate your time.
- 4. Write your examination number (not your name) on each blue book or typed exam.
- 5. Answer all questions in a blue book or type your answers on computer paper. Do not answer on the exam itself.
- 6. Read the question carefully and think out your answer before beginning to write.
- 7. Except for Part I, answer in full sentences. Part of your grade will be based upon your ability to express your ideas in coherent English.
- 8. In answering the questions, do not jump to conclusions—explain how and why you got there. Remember that the conclusion is less important than your analysis.
- 9. If in order to answer the question, you feel that additional factual information is needed, you may make reasonable assumptions consistent with the information given in the question. Never assume the issue away.

10. Good luck!

Part I--Multiple Choice Questions

(suggested time: 30 minutes; 10 points)

Instructions: Choose the **best** answer. Write the number of the question followed by the letter of the correct answer in your blue book or on your computer answer sheet.

- 1. In determining whether proximate causation has been satisfied and deciding whether an intervening variable breaks the chain of causation, courts and commentators have developed the dichotomy between response and coincidence. Which of the following is a correct statement?
- a. A coincidence does not break the chain of causation unless it is foreseeable.
- b. A response does not break the chain of causation unless it is foreseeable.
- c. A coincidence breaks the chain of causation unless it is foreseeable.
- d. A response breaks the chain of causation unless it is unforeseeable.
- e. None of the above.
- 2. A good faith mistake of fact may be a defense to which of the following crimes?
- a. statutory rape
- b. rape
- c. battery
- d. larceny
- e. depraved heart murder
- 3. Under which of the following conditions would an omission to act result in criminal liability?
- a. A runs a child-care center, fails to take a sick child to the hospital, and the child dies.
- b. B fails to take her elderly mother, who is still living on her own, to the doctor and the mother dies.
- c. C hits a pedestrian with her car and kills him instantly.
- d. Dr. D discontinues food and water to a comatose patient, and the patient dies.
- e. E places a unconscious girlfriend in his cellar knowing she has taken deadly drugs and she dies.
- 4. Which of the following is an example of hybrid legal impossibility?
- a. A pickpockets an empty pocket.
- b. B alters the numbers on, but not the written portion of, a check.
- c. C shoots a stuffed deer out of season.
- d. D puts a voodoo curse on E.
- e. F "poisons" G's drink with Splenda.

- 5. Under Ohio criminal law, voluntary intoxication is:
- a. never a defense
- b. only a defense if the defendant is unconscious
- c. a defense to a specific, but not a general intent crime
- d. a defense if the intoxication negatives a mental state required by the crime
- e. a defense if the defendant meets Ohio's insanity defense standard
- 6. In the substantive criminal law, the relationship between courts and legislatures is governed by three principles of statutory construction. One of these principles is the rule of lenity. It provides:
- a. legislatures not courts create crimes
- b. criminal statutes are to be strictly construed
- c. the burden of proof in criminal cases is beyond a reasonable doubt
- d. statutes must provide fair notice of what is prohibited conduct
- e. none of the above

Questions 7-9 are based on the following fact situation:

One day, on the way home from the Cleveland-Marshall College of Law, Prudence found a hundred-dollar bill lying on the sidewalk. The bill was under a wallet with her classmate Sue's student identification in it. Prudence believed that the hundred-dollar bill belonged to Sue, but she decided to keep the money anyway.

- 7. On a charge of common law larceny, Prudence is:
- a. guilty because she knew who the owner of the money was
- b. guilty because she was required to use due diligence in locating the true owner
- c. not guilty because she did not take the money away from Sue
- d. not guilty because she was not absolutely sure that the money belonged to Sue
- e. not guilty because finders of lost property are entitled to keep it as treasure trove
- 8. Suppose that the hundred-dollar bill was not lying next to anyone's wallet and Prudence decided to keep it. On a charge of common law larceny, Prudence is:
- a. guilty because she had a duty to ascertain if the true owner of the property could be found
- b. guilty because of the doctrine of continuing trespass
- c. guilty because she intended to permanently deprive the owner of the property
- d. not guilty because she had no reason to believe that the true owner could be found
- e. not guilty because she did not have the intent to convert the money to her own use

- 9. Suppose that the hundred-dollar bill was not lying next to anyone's wallet and Prudence decided to keep it. Prudence went to the law school the next day and her friend Sue told her that she had lost \$100 at precisely the same location that Prudence had found it on the day before. Prudence nevertheless decides to keep the money and not tell Sue about it. On a charge of common law larceny, Prudence is:
- a. guilty because her decision to keep the money with knowledge of the real owner's identity is against the owner's superior interests
- b. guilty because of the doctrine of continuing trespass
- c. guilty because she intended to keep the money and she knew who the true owner was
- d. not guilty because there is no coincidence of act and intent
- e. not guilty because she did not know if Sue was telling the truth
- 10. Which of the following correctly states the M'Naghten insanity test?
- a. due to a mental disease of defect, the defendant lacks the substantial capacity to appreciate the criminality of his act or to conform his conduct to the requirements of the law
- b. due to a severe mental disease or defect, the defendant is unable to appreciate the nature and quality or wrongfulness of his acts
- c. the criminal act was a result of the defendant's mental disease or defect
- d. due to a mental disease or defect, the defendant does not know the nature or quality of his act, or if he does know it, does not know that the act is wrong
- e. due to a mental disease or defect, the defendant actor is unaware of his criminal act or cannot conform his conduct to the requirements of the law

Question II—Short Answer

(suggested time: 30 minutes; 25 points)

- 1. Define completely the mental state of "negligently" under the Model Penal Code. (3 points)
- 2. Describe the Model Penal Code's version of the common law heat-of-passion doctrine. (3 points)
- 3. Name a specific intent crime and describe the specific intent. (2 points)
- 4. What are the elements of common law rape? (4 points)
- 5. What is the castle doctrine? Under what circumstances does it apply? (2 points)
- 6. Under the common law, what are the "elements" of a necessity defense? (3 points)
- 7. What is the mens rea for attempted rape? (1 point)
- 8. Under the Model Penal Code, what is the act test for an incomplete attempt? (2 points)
- 9. Define common law solicitation. (2 points)
- 10. What are the elements of common law conspiracy? (3 points)

Question III

(suggested time: 30-60 minutes)

By day, Ann and Beth are employees of the United States Postal Service in Shaker Heights, Ohio. Coincidentally, they each began their employment with the Postal Service on the same day in January 1979. Ann works at the counter dealing with customers. She sells stamps, weighs and mails packages, and issues money orders in various denominations. Beth works behind the scenes in the bowels of the post office. She is responsible for sorting mail and ensuring that all packages are properly delivered. The two women make a fair salary as federal employees, but often find that they cannot meet the day-to-day needs of their families. In 1998, to supplement their income, Ann and Beth started a nighttime cleaning service. Between 10 p.m. and 1 a.m., they clean the offices of local companies. One of their biggest accounts is the Office-Super building on Warrensville Center Road. In addition, they clean a small, posh gift shop and a local outlet of a national chain of clothing stores, The Breach, both at Beachwood Place. As part of their cleaning service, the women vacuum the floors, empty the wastepaper baskets, and do some light dusting. Part of their contracts call for them to supply their own cleaning supplies and equipment. Several years ago, Ann and Beth bought an industrial vacuum cleaner to use in their cleaning service.

After several years of Ann and Beth cleaning at The Breach at Beachwood Place, Carla, the manager, notices that there appear to be various discrepancies in the inventory of the store in the last 3 or 4 months. Carla cannot figure out how they discrepancies are occurring since she has the utmost confidence in her sales staff. Carla begins to make a log of inventory for every day over a one-month period. A pattern begins to emerge from this inventory. Each night after Ann and Beth have been there, a shortage appears in the inventory. Carla decides to take some action. She hires a security firm that installs hidden cameras throughout the store. After about two weeks, Carla contacts the security firm and it shows her footage of Ann and Beth taking items off the shelves of the store and placing them in their large, industrial vacuum cleaner. Carla calls the police. The next night, the police hide in the locked storeroom of The Breach store. After Ann and Beth have done their normal cleaning duties, the women start placing clothing inside their vacuum cleaner. The police emerge from the storeroom, arrest both women and take them to jail. In addition, the police obtain search warrants for both women's homes. The search of the homes reveals vast quantities of clothing from The Breach stacked in every conceivable corner.

Please **DISCUSS** what crimes have been committed and by whom, under both the common law and the Model Penal Code.

Question IV

(suggested time: 60-90 minutes)

As the December 2005 holiday season approaches, Dorothy, a retired assistant bank manager and now mother of three small children under the age of six years, decides that her finances are sadly in need of an infusion of cold, hard cash. Dorothy knows exactly where such cash can be found—the Yellow Brick Road Bank & Trust, her former place of employment. Dorothy has been taking time off from her busy duties as mother and homemaker to concoct an elaborate plan for relieving the Yellow Brick Road Bank & Trust of some of its assets. Dorothy has selected December 18, 2005 as the day to put her plan into action.

On that date, Dorothy swings by the magnificent home of her former boss, Willy Wizard. Dorothy can see Willy through the big bay window at the front of his home. Willy is watching the evening news and eating his dinner. Dorothy approaches the front door with a slight bit of trepidation and her heart pounding loudly in her ears. When Willy answers the door, Dorothy, as she has rehearsed many times, bursts into tears and begins telling Willy a sob story about her terrible marriage and her severe financial woes. Willy, who has always liked Dorothy, invites her inside for a cup of hot cocoa or a stiff drink. As Willy is closing the front door behind Dorothy, Dorothy removes a bottle of chloroform and an old baby diaper from her cavernous purse. Dorothy places the chloroformed diaper over Willy's mouth until he passes out. Once he is unconscious, Dorothy places thick electrical tape over Willy's mouth, and around his wrists and ankles. Then, Dorothy manages to drag Willy's comatose body to the back of the house. She pulls up her Toto SUV, loads Willy's body inside, and drives 20 miles out of town to her summer cottage in the woods.

By the time they arrive at the cottage, Willy has woken up and he is not happy with the situation in which he finds himself. When Dorothy attempts to get him out of the SUV, he digs in his heels and refuses to move. Reluctantly, Dorothy reaches into her enormous purse and produces a gun. Actually, the gun is a very realistic plastic gun that she recently confiscated from her son. Willy becomes quite compliant at that point. Dorothy heads him into the sole bedroom of the cottage. She places a manacle around his ankle and chains him to a metal loop in the cement floor. Dorothy leaves plenty of food and water for Willy. He has enough chain to allow him to use the adjoining bathroom, but not enough to reach the phone or any other part of the cottage. Dorothy, because she really likes Willy, explains to him that she will be back the next day and that everything is going to be just fine.

The next day by 10:00 a.m., Federal Express delivers a mysterious package to the Yellow Brick Road Bank & Trust. The package is addressed to Emily Summers, the assistant manager since Dorothy's retirement. Emily opens the package to discover a typewritten note that reads as follows: "I have taken Mr. Wizard. If you want to see him alive again, put \$50,000 in small, unmarked bills into a brown paper bag. Do not include a dye pack. Place the paper bag in the Goodwill dumpster immediately behind the bank at 6:00 in the evening. Do not contact the police. Remember that Mr. Wizard's life depends

upon you following these instructions to the letter." Emily, a nervous person, complies with the instructions. When the bank closes at 6:00, Emily takes the bag containing the money and places it in the dumpster as instructed.

Unfortunately, Dorothy's daughter has a bad cold and Dorothy is unable to make the pickup on time because she is stuck at the doctor's office. Dorothy uses her cell phone to call her best friend, Vera. Dorothy tells Vera a tale about mistakenly leaving a brown paper bag at the Goodwill dumpster which contains Christmas presents. Vera agrees to go to the dumpster and get the bag for Dorothy. Vera retrieves the bag without incident. After finally seeing the doctor, Dorothy goes home, makes her family dinner, and does the dishes. Then, Dorothy tells her husband that she is going to do some last-minute Christmas shopping. First, Dorothy retrieves the bag from Vera. Next, Dorothy drives to the cottage. Willy is lying on the bed. He does not appear to be moving. Dorothy rushes in. Just as she kneels by the side of the bed, Willy leaps off of the bed and grabs Dorothy around the neck. Willy is quite strong and he is terribly angry about the events of the last 24 hours. Dorothy, fearing for her life, manages to grab a knife from her gigantic purse and stab Willy. Although Dorothy was aiming for Willy's arm, she missed and stabbed him in the neck. Unfortunately, Dorothy hit an artery and Willy died almost immediately from a loss of blood.

In addition to the crimes we have studied this semester, the jurisdiction of Oz has the following statute on its books.

Oz Criminal Code § 22.20. Kidnapping: Defined & Punished.

- (a) A person is guilty of kidnapping if he unlawfully removes another from his place of residence or business, or a substantial distance from the vicinity where he is found; or if he unlawfully confines another for a substantial period, with any of the following purposes:
- (1) to hold for ransom or reward;
- (2) to facilitate commission of any felony or flight thereafter;
- (3) to inflict bodily injury on or to terrorize the victim or another; or
- (4) to interfere with the performance of any governmental or political function.
- (b) Kidnapping is a felony in the first degree unless the defendant voluntarily releases the victim alive and in a safe place prior to trial, in which case it is a felony in the second degree. In the case of kidnapping as a felony of the second degree, the court shall impose a sentence of imprisonment of up to ten (10) years; in the case of kidnapping as a felony of the first degree, the court shall impose a sentence of up to twenty-five (25) years.

Please **DISCUSS** what crimes have been committed and by whom, under both the common law and the Model Penal Code. Please also **DISCUSS** any defenses that apply.